IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant(s):	Joshua Kopelman et al.	Examiner: Asfand Sheikh
Serial No.:	10/743,988	Group Art Unit: 3627
Filed:	December 22, 2003	Docket No.: 2043.047US2
Customer No.: 49845		Confirmation No.: 9050
Title:	METHOD AND APPARATUS FOR FACILITATING SALES OF GOODS BY INDEPENDENT PARTIES	

APPEAL BRIEF UNDER 37 CFR § 41.37

Mail Stop Appeal Brief- Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

The Appeal Brief is presented in support of the Notice of Appeal to the Board of Patent Appeals and Interferences, filed on April 7, 2011, from the Final Rejection of claims 1-27 of the above-identified application, as set forth in the Office Action mailed on January 7, 2011.

The Commissioner of Patents and Trademarks is hereby authorized to charge Deposit Account No. 19-0743 in the amount of $540.00 which represents the requisite fee set forth in 37 C.F.R. § 41.20(b)(2). The Appellants respectfully request consideration and reversal of the Examiner's rejections of the pending claims.

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

TABLE OF CONTENTS

1. REAL PARTY IN INTEREST

The real party in interest of the above-captioned patent application is the assignee, eBay Inc.

2. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellants that will have a bearing on the Board's decision in the present appeal.

3. STATUS OF THE CLAIMS

The present application was filed on December 22, 2003 with claims 1-24. In response to a Non-Final Office Action dated October 1, 2008, Appellants amended claims 1-2, 4, 7, and 21 and added claims 25-27. In response to a Final Office Action dated May 28, 2009, Appellants amended (concurrently with a Request for Continued Examination "RCE") claims 1, 16, 18, 21, and 25. In response to a Non-Final Office Action dated February 1, 2010, Appellants amended none of the claims. In response to a Non-Final Office Action dated July 22, 2010, Appellants amended claims 1, 16, 18, 21, and 25. A Final Office Action (hereinafter "the Final Office Action") was dated January 7, 2011 and in response thereto Appellants amended claims 2, 18, and 25 to correct antecedent basis. In an Advisory Action mailed March 25, 2011 the proposed amendments to claims 2, 18, and 25 were entered for purposes of appeal.

Claims 1-27 stand twice rejected, remain pending, and are the subject of the present Appeal.

4. STATUS OF AMENDMENTS

All amendments submitted prior to the filing of the Notice of Appeal (including those made in response to the Final Office Action) have been entered. A copy of the appealed claims is attached as Section 8, "Claims Appendix".

5. SUMMARY OF CLAIMED SUBJECT MATTER

This summary is presented in compliance with the requirements of Title 37 C.F.R.

§41.37(c)(I)(v), mandating a "concise explanation of the subject matter defined in each of the

independent claims involved in the appeal." Nothing contained in this summary is intended to

change the specific language of the claims described, nor is the language of this summary to be

construed to limit the scope of the claims in any way. Specific page, paragraph, and line

numbers, as well as Figure and element numbers, are merely exemplary and are given below

merely as an aid in understanding various inventive subject matters presented. The page,

paragraph, and line numbers relate to the Appellants' as-filed Application wherein the line

numbers are with respect to the page in which the lines are found. Aspects of the present

inventive subject matter include, but are not limited to, a method and apparatus for facilitating

sales of goods by independent parties.

A.   The Subject Matter as Claimed in Independent Claim 1

The claimed subject matter of claim 1 is a method for pricing goods offered for sale by

independent sellers. [1]

The method is computer implemented by a marketeer controller capable of

communicating via a communications network, with the marketeer controller being configured

for electronic communication via the communications network and including a CPU and a

memory operatively connected to the CPU. [2]

The method comprises the marketeer controller receiving data from an independent

seller, via the communications network, the data identifying a good offered for sale by the

independent seller and representing the independent seller's agreement to sell the good at an

---

[1] *See, e.g.,* Application specification page 7, lines 5-10, Figures 1 and 3.
[2] *See, e.g.,* Application specification page 10, lines 1 to 6; page 10, line 15 to page 11, line 4, Figure 2, reference
nos, 70, 72, 74, 76, and 82.

unspecified fixed price to be determined by the marketeer controller as a function of another party's price for a comparable good, in accordance with a predetermined method.[3]

The method includes querying a vendor to determine the vendor's price for a comparable good, the querying comprising the marketeer controller transmitting a query, via the communications network, to a vendor's controller that is configured for electronic communication via the communication network and that includes a respective CPU and a respective memory operatively connected to the respective CPU, said query identifying said good and requesting transmission to the marketeer controller of the vendor's price for the comparable good.[4]

The method includes receiving, via the communications network, the vendor's price for the comparable good.[5]

The method includes establishing with a pricing agent stored in the memory of the marketeer controller a sale price at which the good may be purchased by a buyer from the independent seller, the sale price derived by the predetermined method using as input the received vendor's price for the comparable good.[6]

B.   The Subject Matter as Claimed in Independent Claim 16

The claimed subject matter of claim 16 is a method for pricing goods offered for sale by independent sellers.[7]

---

[3] *See, e.g.*, Application specification page 7, lines 12 to 13; Application specification page 7, line 20 to page 8, line 5, Figure 1, reference nos. 20, 26, and 28; Application specification page 11, lines 17 to 19; Application specification page 12, line 6 to page 13, line 6; Figure 3, reference nos. 130, 140.
[4] *See, e.g.*, Application specification page 8, line 15 to page 9, line 3, Figure 1, reference no. 28; Figure 3, reference nos. 120, 150.
[5] *See, e.g.*, Application specification page 8, line 15 to page 9, line 3, Figure 1, reference no. 26.
[6] *See, e.g.*, Application specification page 13, lines 7 to 14, Figure 1, reference no. 30; Figure 3, reference no. 160.
[7] *See, e.g.*, Application specification page 7, lines 5-10, Figures 1 and 3.

The method is computer implemented by a marketeer controller capable of communicating via a communications network, the marketeer controller being configured for electronic communication via the communication network and including a CPU and a memory operatively connected to the CPU.[8]

The method comprises the marketeer controller receiving from an independent seller, via the communications network, data identifying a good offered for sale by the independent seller and representing the independent seller's agreement to sell the good at an unspecified fixed price to be determined by the marketeer controller as a function of the price of comparable goods offered by various parties, in accordance with a predetermined method.[9]

The method includes querying a plurality of third party's vendor controllers for a price for a comparable good, said querying comprising the marketeer controller transmitting a query, via the communications network, to the third parties' vendor controllers that are configured for electronic communication via the communication network and that includes a respective CPU and a respective memory operatively connected to the respective CPU, said querying identifying said good and requesting transmission to the marketeer to determine each third party's price of a comparable good.[10]

The method includes receiving, via the communications network, a set of third party's prices for comparable goods.[11]

The method includes establishing with a pricing agent stored in the memory of the marketeer controller a sale price at which the good may be purchased by a buyer from the

---

[8] *See, e.g.*, Application specification page 10, lines 1 to 6; Application specification page 10, line 15 and following, Figure 2, references nos. 72, 74, 76.
[9] *See, e.g.*, Application specification page 7, lines 12 to 13; Application specification page 7, line 20 to page 8, line 5, Figure 1, reference nos. 20,26 and 28; Application specification page 12, line 6 to page 13, line 6.
[10] *See, e.g.*, Application specification page 8, line 15 to page 9, line 3, Figure 1, reference no. 26, Figure 2, reference number 72.
[11] *See, e.g.*, Application specification page 8, lines 16 to 19; Application specification page 12, line 21 to page 13, line 6, Figure 1, reference no. 26, Figure 3, reference no. 150.

independent seller, the sale price derived by the predetermined method using as input the set of received third party's prices for the comparable good.[12]

C.   The Subject Matter as Claimed in Independent Claim 18

The claimed subject matter of claim 18 is a method for pricing goods offered for sale by independent sellers.[13]

The method is computer implemented by a marketeer controller capable of communicating via a communications network, the marketeer controller being configured for electronic communication via the communications network and including a CPU and a memory operatively connected to the CPU.[14]

The method comprises the marketeer controller receiving from an independent seller, via the communications network, data identifying a good offered for sale by the independent seller, where the independent seller's good being a certain good in used condition and representing the independent seller's agreement to sell the good at unspecified fixed price to be determined by the marketeer controller as a function of another party's price, in accordance with a predetermined method.[15]

The method includes querying a vendor to determine the vendor's price for a comparable good, said querying comprising the marketeer controller transmitting a query, via the communications network, to a vendor's controller that is configured for electronic transmission via the communications network that includes a respective CPU and respective memory operatively connected to the respective CPU, said querying identifying said good and requesting

---

[12] *See, e.g.*, Application specification page 12, line 21 to page 13, line 6, Figure 3; Application specification page 13, lines 7 to 14, Figure 3, reference no. 160.
[13] *See, e.g.*, Application specification page 7, lines 5-10, Figures 1 and 3.
[14] *See, e.g.*, Application specification page 10, lines 1 to 6; Application specification page 10, line 15 and following, Figure 2, reference nos. 70, 72, 74, 76, 80, 90.
[15] *See, e.g.*, Application specification page 7, lines 12 to 13; Application specification page 15, lines 3 to 7, Figure 3, reference no. 130.

transmission to the marketeer controller of the vendor's price for the comparable good, the comparable good being the certain good in new condition.[16]

The method includes establishing with a pricing agent stored in the memory of the marketeer controller a sale price at which the good may be purchased by a buyer from the independent seller, the sale price derived by the predetermined method using as input the received vendor's price for the comparable good, the predetermined method comprising discounting the vendor's price for the comparable good to determine the sale price for the independent seller's good.[17]

D.   The Subject Matter as Claimed in Independent Claim 21

The claimed subject matter of claim 21 is a marketeer controller for processing data for pricing an independent seller's good.[18]

The controller comprises a central processing unit (CPU) for executing programs.[19]

The controller also comprises a memory operatively connected to the CPU.[20]

The controller also comprises a network interface device operatively connected to the CPU for communicating with a seller's computing device and a vendor's controller computer via a communications network.[21]

The controller also comprises a first program stored in the memory for receiving from the seller's computing device data identifying the seller's good and representing the independent

---

[16] *See, e.g.*, Application specification page 15, lines 8 to 16; Application specification page 8, line 15 to page 9, line 3, Figure 1, reference no. 26, Figure 3, reference no. 150.
[17] *See, e.g.*, Application specification page 12, lines 6 to 20; Application specification page 13, lines 7 to 14, Figure 3, reference no. 160.
[18] *See, e.g.*, Application specification page 10, lines 15 to 16, Figure 2, reference no. 70.
[19] *See, e.g.*, Application specification page 10, lines 16 to 17, Figure 2, reference no. 72.
[20] *See, e.g.*, Application specification page 10, lines 17 to 18, Figure 2, reference nos. 74,76; Application specification page 10, line 20, Figure 2, reference no. 82.
[21] *See, e.g.*, Application specification page 10, lines 18 to 20, Figure 2, reference nos. 78, 80, 90.

seller's agreement to sell the good at an unspecified fixed price to be determined by the marketeer controller as a function of another party's price for a comparable good, in accordance with a predetermined pricing method, and for storing the data in the memory in association with the predetermined pricing method.[22]

The controller also comprises a shopping agent program stored in the memory for querying the vendor's controller computer to determine the vendor's price for a comparable good comparable to the seller's good, and for determining an index price based on the vendor's price.[23]

The controller also comprises a pricing agent program stored in the memory for deriving a sale price for the seller's good, the pricing agent program being configured to derive the sale price for the seller's good from the index price using the predetermined pricing method.[24]

E.   The Subject Matter as Claimed in Independent Claim 25

The claimed subject matter of claim 25 is a computer-implemented method for offering for sale goods of independent sellers at specified sales prices.[25]

The method is computer-implemented by a marketeer controller computer capable of communicating via a communications network, the marketeer controller computer being configured for electronic communication via the communications network and including a microprocessor and a memory operatively connected to the microprocessor.[26]

The method comprises the marketeer controller computer receiving from an independent seller, via the communications network, data identifying a good and representing the independent

---

[22] *See, e.g.*, Application specification page 10, lines 21 and following, Figure 2, reference nos. 74,76, 82.

[23] *See, e.g.*, Application specification page 10, lines 21 and following, Figure 2, reference nos. 74, 76, 82.

[24] *See, e.g.*, Application specification page 10, lines 21 and following, Figure 2, reference nos. 74, 76, 82.

[25] *See, e.g.*, Application specification page 7, lines 5-10, Figures 1 and 3.

[26] *See, e.g.*, Application specification page 10, lines 1 to 6; Application specification page 10, line 15 to page 11, line 4, Figure 2, reference nos. 70, 72, 74, 76, and 82; Application specification page 10, lines 17 to 18, Figure 2, reference nos. 70, 72, 74, 76 and 82; Application specification page 10, line 20, Figure 2, reference nos. 70, 72, 74, 76 and 82.

seller's agreement to sell the good at an unspecified fixed price to be subsequently determined according to a specified pricing method.[27]

The method includes the marketeer controller computer storing the data in the memory to add the good to a list of goods registered for sale with the marketeer, the good being listed for sale at the unspecified fixed price.[28]

In response to the marketeer controller computer's receipt from a buyer, via the communications network, of an expression of interest in purchasing the good, the marketeer controller computer queries a vendor to determine the vendor's price for a comparable good, the querying comprising the marketeer controller computer transmitting a query, via the communications network, to the vendor's controller computer that is configured for electronic communication via the communication network and that includes a respective microprocessor and a respective memory operatively connected to the respective microprocessor, the query identifying the comparable good and requesting transmission to the marketeer controller of the vendor's price for the comparable good.[29]

The method includes the marketeer controller computer receiving, via the communications network, the vendor's price for the comparable good.[30]

The method includes the marketeer controller computer deriving a sale price at which the buyer may purchase the good from the independent seller, the deriving comprising a pricing agent program of the marketeer controller computer receiving the vendor's price for the comparable good as input and providing the sale price for the independent seller's good as

---

[27] *See, e.g.*, Application specification page7, lines 14 to 15, Figures 1, reference no. 20 and Figure 3, reference nos. 110, 130, 140; Application specification page 12, lines 6 to 8, Figure 3, reference nos. 110, 130, 140.
[28] *See, e.g.*, Application specification page 11, line17 to 19, Figure 3, reference no. 130; Application specification page 13, lines 7 to 16.
[29] *See, e.g.*, Application specification page 14, lines 6 to 10, Figure 3, reference nos. 150, 180, 190; Application specification page 15, lines 8 to 16, Figure 3, reference nos. 150, 180, 190; Application specification page 8, line 15 to page 9, line 3, Figure 1, reference nos. 24 and 30.
[30] *See, e.g.*, Application specification page 12, lines 6 to 20; Application specification page 13, lines 7 to 14, Figure 3, reference no. 150.

APPEAL BRIEF UNDER 37 C.F.R. § 41.37
Serial Number:10/743,988
Filing Date: December 22, 2003
Title: METHOD AND APPARATUS FOR FACILITATING SALES OF GOODS BY INDEPENDENT PARTIES
Page 13
Dkt: 2043.047US2

output, the sale price being determined by the pricing agent program as a function of the vendor's price for the comparable good and the predetermined pricing method.[31]

The method includes the marketeer controller computer presenting the good to the buyer for purchase from the independent seller at the sale price.[32]

This summary does not provide an exhaustive or exclusive view of the present claimed subject matter, and Appellants refer to each of the appended claims and its legal equivalents for a complete statement of the invention.

---

[31] *See, e.g.*, Application specification page 13, lines 7 to 14, Figure 3, reference no. 160.
[32] *See, e.g.*, Application specification page 14, lines 11 to 14, Figure 3, reference no. 190.

6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Rejection of claims 1-27 under 35 U.S.C. § 103(a) as being unpatentable over Nahan et al. (U.S. Patent No. 5,664,111) in view of Stack (U.S. Patent No. 6,076,070) and Reuhl et al. (U.S. Patent No. 5,873,069) and Woolston (U.S. 6,202,051 B1).

7. ARGUMENT

A) The Applicable Law under 35 U.S.C. §103(a)

As a preliminary matter, it is well known that the Examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness. "All words in a claim must be considered in judging the patentability of that claim against the prior art." MPEP § 2413.03 citing In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). Thus, "obviousness requires a suggestion of all limitations in a claim." CFMT, Inc. v. Yieldup Intern. Corp., 349 F.3d 1333, 1342 (Fed. Cir. 2003) (citing In re Royka, 490 F.2d 981, 985 (CCPA 1974)). Moreover, as the Supreme Court recently stated, "there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." KSR Int'l v. Teleflex Inc., 127 S. Ct. 1727, 1741 (2007) (quoting In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006)).

B) Discussion of the rejection of claims 1-27 under 35 U.S.C. § 103(a) as being unpatentable over Nahan et al. (U.S. Patent No. 5,664,111) in view of Stack (U.S. Patent No. 6,076,070) and Reuhl et al. (U.S. Patent No. 5,873,069) and Woolston (U.S. 6,202,051 B1).

Independent claims 1, 16, 18, 21 and 25 cited above were rejected under 35 USC § 103(a) as allegedly being obvious over a combination requiring four references: Nahan et al. (U.S. Patent No. 5,664,111) in view of Stack (U.S. Patent No. 6,076,070) and Reuhl et al. (U.S. Patent No. 5,873,069) and Woolston (U.S. 6,202,051 B1). This rejection is respectfully traversed. The Appellants respectfully submits that the Final Office Action has arrived at an improper finding of obviousness at least because none of the cited references, alone or in combination, relates to or teaches a method (or controller) for pricing goods offered for sale by independent sellers at "unspecified fixed prices." The Appellants' detailed arguments follow hereunder.

Claim 1 requires "receiving data from an independent seller..., the data identifying a good offered for sale by the independent seller and representing the independent seller's

agreement to **sell the good at an unspecified fixed price** to be determined by the marketeer controller **as a function of another party's price for a comparable good**, in accordance with a predetermined method" (emphasis added). For example, the seller may provide a UPC code that identifies the good <u>without specifying the price of the good</u>. The marketeer system then obtains a vendor's price of a comparable good and establishes the sale price for the good based on the vendor's price of the comparable good, as required by claim 1. It is noted that prior to obtaining the vendor's price of the comparable good, <u>the seller's good is not associated with a price</u>.

Nahan does not disclose receiving data from the independent seller representing the independent seller's agreement to sell the good at <u>an unspecified fixed price</u> to be determined by the marketeer controller as a function of another party's price for a comparable good, as required by claim 1. The Examiner cites various sections of Nahan (*see* Final Office Action at 3-4), but the only cited section of Nahan that discusses pricing of goods merely discloses calculating a price difference ratio based on a retail price for the good and a wholesale price for the good (*see, e.g.*, Nahan, column 13, lines 13-28). This section of Nahan does not disclose or suggest who specifies the retail and wholesale prices and in what manner the retail and wholesale prices are specified. Therefore, Nahan cannot disclose receiving data from the independent seller representing the independent seller's agreement to sell the good at <u>an unspecified fixed price</u> to be determined by the marketeer controller as a function of another party's price for a comparable good.

Stack and Reuhl also fail to address the deficiencies of Nahan with respect to claim 1. For example, the Examiner cites Stack, column 2, lines 34-60, column 3, line 45 to column 4, line 15, and column 4, lines 31-33,[33] which merely disclose comparing a seller's price of a good with a competitor's price of the good and situations in which a price of a good is reduced. The Appellants note that in order to compare a seller's price of a good with a competitor's price of the good, the seller's good must necessarily be <u>associated with a price</u>. Furthermore, to reduce a price of a seller's good, the seller's good must necessarily be <u>associated with a price</u>. In other words, the price of the good has already been <u>specified</u>, and Stack is merely comparing a

---

[33] Page 5 of the Office Action dated January 7, 2011.

competitor's price and reducing the seller's price of the good. There is nothing in these sections of Stack that disclose or suggest that the marketeer system receives data representing the independent seller's agreement to sell the good at <u>an unspecified fixed price</u> to be determined by the marketeer controller as a function of another party's price for a comparable good, as required by claim 1.

Similarly, the Examiner cites Reuhl, column 4, lines 7-19, which merely discloses comparing an active price of the seller's good with a competitor's price of the good and changing the price of the seller's good accordingly.[34] As with Stack, this section of Reuhl necessarily requires that the good is already <u>associated with a price</u>. There is nothing in this section of Reuhl that discloses or suggests that the marketeer system receives data representing the independent seller's agreement to sell the good at <u>an unspecified fixed price</u> to be determined by the marketeer controller as a function of another party's price for a comparable good, as required by claim 1.

The Examiner then states that Woolston's Abstract discloses an unspecified fixed price.[35] However, Woolston's Abstract merely discloses <u>an auction</u>. The Appellants points out that although the price of a good during an auction may change, this feature of an auction does not disclose "an unspecified fixed price". The terms "an unspecified fixed price" mean that the price is both a <u>fixed price</u> (e.g., the price does not change once it is set) and the price is <u>unspecified</u> (e.g., unspecified by the seller at the time the data is received by the marketeer system). Although the price of a good in an auction may be unspecified (e.g., it may change over time), the price of the good in the auction <u>is not fixed</u> (e.g., the price of the good during the auction changes throughout the course of the auction), as required by claim 1. Thus, there is nothing in these sections of Woolston that discloses or suggests that the marketeer system receives data representing the independent seller's agreement to sell the good at <u>an unspecified fixed price</u> to be determined by the marketeer controller as a function of another party's price for a comparable good, as required by claim 1. In the Advisory Action dated March 25, 2011, the Examiner indicated [36] that Woolston discloses a "buy at" price. A "buy at" price is not an "unspecified

---

[34] Page 7 of the Office Action dated January 7, 2011.
[35] Page 9 of the Office Action dated January 7, 2011.
[36] Advisory Action of March 25, 2011, continuation sheet, paragraph 2, line 3.

fixed price;" on the contrary, it is specified. This disclosure in Woolston therefore does not add to the other cited references in that the price of a good has already been _specified_. More particularly, there is nothing in the abstract or cited sections of Woolston that discloses or suggests that the marketeer system receives data representing the independent seller's agreement to sell the good at an unspecified fixed price to be determined by the marketeer controller as a function of another party's price for a comparable good, as required by claim 1.

For at least the reasons noted above, Nahan, Stack, Reuhl, and Woolston either alone or in combination, do not disclose or suggest "receiving data from an independent seller…, the data identifying a good offered for sale by the independent seller and representing the independent seller's agreement to sell the good at an unspecified fixed price to be determined by the marketeer controller as a function of another party's price for a comparable good, in accordance with a predetermined method", as required by claim 1. Thus, independent claim 1 and its dependents are patentable over the combination of Nahan, Stack, Reuhl, and Woolston. Furthermore, independent claims 16, 18, 21, 25, and their dependents are patentable over the combination of Nahan, Stack, Reuhl, and Woolston for at least the reasons noted above with respect to claim 1.

In addition to the reasons noted above with respect to claim 1, claim 2 is patentable over the combination of Nahan, Stack, Reuhl, and Woolston for the following additional reasons.

Claim 2 requires "presenting the good in a marketplace as an item for sale at the unspecified fixed price…" For example, if a seller is selling a baseball card, the baseball card is presented in the marketplace at the unspecified price (e.g., a price for the baseball card is not specified).

The Examiner correctly states that Nahan, Stack, and Reuhl do not disclose this element of claim 2.[37] The Examiner then states that Woolston's Abstract discloses this element of claim

---

[37] Pages 8-9 of the Office Action dated July 22, 2010.

2.[38] However, Woolston's Abstract merely discloses an auction process. As discussed above, an auction does not involve pricing items at an unspecified fixed price. Thus, Woolston cannot disclose or suggest "presenting the good in a marketplace as an item for sale at the unspecified fixed price…", as required by claim 2.

Claim 2 also requires "presenting the good for sale in the marketplace at the sale price, the querying and establishing steps being performed responsive to receiving from the buyer … an expression of interest in purchasing the good…" Thus, the sale price of the good is determined in response to a buyer expressing interest in purchasing the good. Continuing the example, when a buyer expresses an interest in purchasing the baseball card, the vendor controller is queried and a sale price is established. The baseball card is presented in the marketplace at the sale price.

The Examiner correctly states that Nahan, Stack, and Reuhl do not disclose this element of claim 2.[39] The Examiner then states that Woolston's Abstract discloses this element of claim 2.[40] As discussed above, Woolston's Abstract merely discloses an auction process. An auction process does not disclose or suggest "querying a vendor to determine the vendor's price for a comparable good…" and "establishing with a pricing agent stored in the memory of the marketeer controller a sale price at which the good may be purchased by a buyer from the independent seller, the sale price derived by the predetermined method using as input the received vendor's price for the comparable good" in response to receiving from the buyer an expressing of interest in purchasing the good. In fact, in an auction, the sale price of the good is determined by the highest bid placed by buyers of the good and **not** by a vendor's price of a good. Even the setting by a competitive vendor of a "buy at" price has nothing to do with receiving a response from a buyer and receiving data representing the independent seller's agreement to sell the good at an unspecified fixed price to be determined by the marketeer controller.

---

[38] Pages 8-9 of the Office Action dated July 22, 2010.
[39] Pages 8-9 of the Office Action dated July 22, 2010.
[40] Pages 8-9 of the Office Action dated July 22, 2010.

Thus, Woolston does not disclose or suggest the required elements of claim 2. Since Woolston does not address the deficiencies of Nahan, Stack, and Reuhl, claim 2 is patentable over the combination of Nahan, Stack, Reuhl, and Woolston.

APPEAL BRIEF UNDER 37 C.F.R. § 41.37
Serial Number: 10/743,988
Filing Date: December 22, 2003
Title: METHOD AND APPARATUS FOR FACILITATING SALES OF GOODS BY INDEPENDENT PARTIES

Page 21
Dkt: 2043.047US2

SUMMARY

For at least the reasons argued above, the Appellants respectfully submit claims 1-27 are not rendered obvious under § 103(a) over Nahan in view of Stack and Reuhl and Woolston. Reversal of the rejection and allowance of the pending claims are respectfully requested.

Respectfully submitted,

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(612) 373-6900

Date _August 8, 2011_____ By _____

Mark D. Yuan
Reg. No. 57,312

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Appeal Brief – Patents, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this _8th_ day of August , 2011.

Nicole Jack
_____

Name

Signature _____

8. CLAIMS APPENDIX

1.   A method for pricing goods offered for sale by independent sellers, the method being
computer implemented by a marketeer controller capable of communicating via a
communications network, the marketeer controller being configured for electronic
communication via the communications network and including a CPU and a memory operatively
connected to the CPU, the method comprising the marketeer controller:

receiving data from an independent seller, via the communications network, the data
identifying a good offered for sale by the independent seller and representing the independent
seller's agreement to sell the good at an unspecified fixed price to be determined by the
marketeer controller as a function of another party's price for a comparable good, in accordance
with a predetermined method;

querying a vendor to determine the vendor's price for a comparable good, said querying
comprising the marketeer controller transmitting a query, via the communications network, to a
vendor's controller that is configured for electronic communication via the communication
network and that includes a respective CPU and a respective memory operatively connected to
the respective CPU, said query identifying said good and requesting transmission to the
marketeer controller of the vendor's price for the comparable good;

receiving, via the communications network, the vendor's price for the comparable good;
and

establishing with a pricing agent stored in the memory of the marketeer controller a sale
price at which the good may be purchased by a buyer from the independent seller, the sale price
derived by the predetermined method using as input the received vendor's price for the
comparable good.

2.   The method of claim 1, further comprising:

presenting the good in a marketplace as an item for sale at the unspecified fixed price, the
marketplace being accessible to a buyer via the communications network; and

APPEAL BRIEF UNDER 37 C.F.R. § 41.37
Serial Number:10/743,988
Filing Date: December 22, 2003
Title: METHOD AND APPARATUS FOR FACILITATING SALES OF GOODS BY INDEPENDENT PARTIES

Page 23
Dkt: 2043.047US2

presenting the good for sale in the marketplace at the sale price, the querying and establishing steps being performed responsive to receiving from the buyer, via the communications network, an expression of interest in purchasing the good, whereby the sale price is derived proximate a time of sale of the good to the buyer.

3.   The method of claim 1, wherein the seller agrees, before the sale, to sell the good at a sale price determined by the marketeer proximate a time of sale of the good to the buyer, the sale price being determined in accordance with the predetermined method.

4.   The method of claim 1, wherein using a predetermined method to derive the sale price comprises equating an index price to the vendor's price of the comparable good.

5.   The method of claim 1, wherein the seller's good is used and has a certain universal product code (UPC) or International Standard Book Number (ISBN) code, and the comparable good is new and has an identical UPC or ISBN.

6.   The method of claim 1, wherein the querying is performed responsive to the receiving of the identifying data.

7.   The method of claim 1, wherein the predetermined method is set by the marketeer controller.

8.   The method of claim 1, wherein the data identifying the good of the independent seller's good comprises a universal product code (UPC).

9.   The method of claim 1, wherein the data identifying the good the independent seller's good comprises an International Standard Book Number (ISBN).

10.   The method of claim 1, wherein the predetermined method comprises discounting the index price for the comparable good to determine the sale price for the independent seller's good.

11.   The method of claim 10, wherein the predetermined method comprises discounting the
index price by approximately fifty percent.

12.   The method of claim 1, wherein the querying is performed responsive to receiving from a
buyer, via the communications network, an expression of interest in purchasing the good.

13.   The method of claim 12, wherein the expression of interest is a standard identification
code identifying the good.

14.   The method of claim 13, wherein the standard identification code comprises a universal
product code (UPC).

15.   The method of claim 13, wherein the standard identification code comprises an
International Standard Book Number (ISBN).

16.   A method for pricing goods offered for sale by independent sellers, the method being
computer implemented by a marketeer controller capable of communicating via a
communications network, the marketeer controller being configured for electronic
communication via the communication network and including a CPU and a memory operatively
connected to the CPU, the method comprising the marketeer controller:
        receiving from an independent seller, via the communications network, data identifying a
good offered for sale by the independent seller and representing the independent seller's
agreement to sell the good at an unspecified fixed price to be determined by the marketeer
controller as a function of the price of comparable goods offered by various parties, in
accordance with a predetermined method;
        querying a plurality of third party's vendor controllers for a price for a comparable good,
said querying comprising the marketeer controller transmitting a query, via the communications
network, to the third parties' vendor controllers that are configured for electronic
communication via the communication network and that includes a respective CPU and a

respective memory operatively connected to the respective CPU, said querying identifying said good and requesting transmission to the marketeer to determine each third party's price of a comparable good;

receiving, via the communications network, a set of third party's prices for comparable goods; and

establishing with a pricing agent stored in the memory of the marketeer controller a sale price at which the good may be purchased by a buyer from the independent seller, the sale price derived by the predetermined method using as input the set of received third party's prices for the comparable good.

17.   The method of claim 16, wherein the predetermined method for deriving the sale price of the independent seller's good is set by the marketeer controller.

18.   A method for pricing goods offered for sale by independent sellers, the method being computer implemented by a marketeer controller capable of communicating via a communications network, the marketeer controller being configured for electronic communication via the communications network and including a CPU and a memory operatively connected to the CPU, the method comprising the marketeer controller:

receiving from an independent seller, via the communications network, data identifying a good offered for sale by the independent seller, where the independent seller's good being a certain good in used condition and representing the independent seller's agreement to sell the good at unspecified fixed price to be determined by the marketeer controller as a function of another party's price, in accordance with a predetermined method;

querying a vendor to determine the vendor's price for a comparable good, said querying comprising the marketeer controller transmitting a query, via the communications network, to a vendor's controller that is configured for electronic transmission via the communications network that includes a respective CPU and respective memory operatively connected to the respective CPU, said querying identifying said good and requesting transmission to the marketeer controller of the vendor's price for the comparable good, the comparable good being the certain good in new condition; and

establishing with a pricing agent stored in the memory of the marketeer controller a sale price at which the good may be purchased by a buyer from the independent seller, the sale price derived by the predetermined method using as input the received vendor's price for the comparable good, the predetermined method comprising discounting the vendor's price for the comparable good to determine the sale price for the independent seller's good.

19.   The method of claim 18, wherein the querying vendor's controller is performed proximate a time that the buyer wishes to buy the independent seller's good.

20.   The method of claim 18, wherein the querying is performed proximate a time that the independent seller registers the good with the marketeer as a good offered for sale by the seller.

21.   A marketeer controller for processing data for pricing an independent seller's good, comprising:

     a central processing unit (CPU) for executing programs;

     a memory operatively connected to the CPU;

     a network interface device operatively connected to the CPU for communicating with a seller's computing device and a vendor's controller computer via a communications network;

     a first program stored in the memory for receiving from the seller's computing device data identifying the seller's good and representing the independent seller's agreement to sell the good at an unspecified fixed price to be determined by the marketeer controller as a function of another party's price for a comparable good, in accordance with a predetermined pricing method, and for storing the data in the memory in association with the predetermined pricing method;

     a shopping agent program stored in the memory for querying the vendor's controller computer to determine the vendor's price for a comparable good comparable to the seller's good, and for determining an index price based on the vendor's price; and

     a pricing agent program stored in the memory for deriving a sale price for the seller's good, the pricing agent program being configured to derive the sale price for the seller's good from the index price using the predetermined pricing method.

22.   The marketeer controller of claim 21, wherein the shopping agent program is configured to use the standard identification code to query the vendor's controller.

23.   The marketeer controller of claim 21, wherein the seller's good is used and has a certain universal product code (UPC) or International Standard Book Number (ISBN), and the comparable good is new and has an identical UPC or ISBN.

24.   The marketeer controller of claim 21, wherein the predetermined method comprises discounting the index price to determine the sale price for the independent seller's good.

25.   A computer-implemented method for offering for sale goods of independent sellers at specified sales prices, the method being computer-implemented by a marketeer's marketeer controller computer capable of communicating via a communications network, the marketeer controller computer being configured for electronic communication via the communications network and including a microprocessor and a memory operatively connected to the microprocessor, the method comprising:

        the marketeer controller computer receiving from an independent seller, via the communications network, data identifying a good and representing the independent seller's agreement to sell the good at an unspecified fixed price to be subsequently determined according to a specified pricing method;

        the marketeer controller computer storing the data in the memory to add the good to a list of goods registered for sale with the marketeer, the good being listed for sale at the unspecified fixed price;

        in response to the marketeer controller computer's receipt from a buyer, via the communications network, of an expression of interest in purchasing the good:

        the marketeer controller computer querying a vendor to determine the vendor's price for a comparable good, the querying comprising the marketeer controller computer transmitting a query, via the communications network, to the vendor's controller computer that is configured for electronic communication via the communication network and that includes a respective microprocessor and a respective memory operatively connected to the respective microprocessor,

the query identifying the comparable good and requesting transmission to the marketeer controller of the vendor's price for the comparable good;

the marketeer controller computer receiving, via the communications network, the vendor's price for the comparable good; and

the marketeer controller computer deriving a sale price at which the buyer may purchase the good from the independent seller, the deriving comprising a pricing agent program of the marketeer controller computer receiving the vendor's price for the comparable good as input and providing the sale price for the independent seller's good as output, the sale price being determined by the pricing agent program as a function of the vendor's price for the comparable good and the predetermined pricing method; and

the marketeer controller computer presenting the good to the buyer for purchase from the independent seller at the sale price.

26.   The method of claim 1, wherein the predetermined pricing method to be used is set by the marketeer controller.

27.   The method of claim 1, wherein the predetermined pricing method to be used to derive a price for the independent seller's good is set by the independent seller.

9. EVIDENCE APPENDIX

None.

10. RELATED PROCEEDINGS APPENDIX

None.